

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Qu et al.
Title: COMPOSITIONS AND
METHODS FOR
DETERMINING GENOTYPES
Appl. No.: 10/714,508
Filing Date: 11/14/2003
Patent No.: 7,514,213
Grant Date: 4/7/2009
Examiner: Stephanie Kane Mummert
Art Unit: 1645
Confirmation Number: 9832

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on April 7, 2009 as U.S. Patent No. 7,514,213.

The Patent Office determined that the patent was entitled to 938 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1230 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR §§1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1230 days
(b) Total Applicant delay:	61 days
Final PTA Determination:	1169 days

Applicants therefore respectfully request that the patent be accorded 1169 days PTA; an additional 231 days beyond the PTA already granted to the PTO.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or

absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date

05/15/2009

By



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Patent Term Adjustment Calculation System

Docket Number: 034827-3002
Application Number: 10/714508
Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Application Filing Date	11/14/2003	0		
Notice to File Missing Parts	02/17/2004	95		
Response to Notice to File Missing Parts	03/22/2004	129		
14 month From Application date	01/14/2005	427		
Restriction Requirement	01/04/2006	782	355	
Restriction Requirement Response Received at PTO	02/03/2006	812		
Non-Final Office Action	03/21/2006	858		
Non-Final Office Action + 3 months	06/21/2006	950		
Non-Final Office Action Rsp. Rcv'd at PTO	06/23/2006	952		2
Final Office Action	09/11/2006	1,032		
3 Year Period Starts	11/14/2006	1,096		
Final Office Action + 3 months	12/11/2006	1,123		
Notice of Appeal Received at PTO	02/08/2007	1,182		59
Final Office Action Response Received at PTO	02/08/2007	1,182		
Appeal Brief Received at PTO	05/08/2007	1,271		
Final Office Action Rsp. Rcv'd at PTO + 4 mo.	06/08/2007	1,302		
Appeal Brief Filed + 4 months	09/08/2007	1,394		
Examiner's Answer Mailed	09/19/2007	1,405	(103),(11)	
Reply Brief Received at PTO	11/16/2007	1,463		
Appeal Decided by Examiner	11/12/2008	1,825		
Notice of Allowance	11/28/2008	1,841		
Issue Fee Paid	02/25/2009	1,930		
Patent Grant Date	04/07/2009	1,971	875	
		Totals:	1,230	61
		PTA:	1,169	

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Version: 3.02.05

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IP: 10.6.2.174

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